
Environmental Justice Q&A

Interim FAA Policy Guidance

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INTRODUCTION

Executive Order (EO) 12898 “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” requires Federal agencies like FAA that are members of the Interagency Working Group to consider environmental justice issues in their policies, activities, and procedures. Environmental justice means that no group of people should bear a high and disproportionate share of adverse human health or environmental effects.

The purpose of this document is to provide information on the requirements of EO 12898 and to discuss how FAA can integrate environmental justice into the National Environmental Policy Act (NEPA) process. The document also presents information on guidance from the Council on Environmental Quality, U.S. Environmental Protection Agency, and U.S. Department of Transportation about environmental justice implementation strategies and requirements.

QUESTIONS AND ANSWERS

1. What is environmental justice?

Environmental justice is the fair treatment and meaningful involvement of people of all races, cultures, and incomes, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Ensuring "fair treatment" of all people does not mean that risks should be merely shifted from one population to another; rather, the goal of environmental justice is for Federal decision-makers to identify impacts that are disproportionately high and adverse, and identify alternatives that will avoid or mitigate these impacts.

2. What regulations and guidance establish environmental justice requirements for FAA?

FAA is committed to identifying impacts that result in a disproportionately high and adverse impact on minority and low-income populations. In the 1998 FAA Strategic Plan, a commitment was made to monitor FAA compliance with the DOT order on environmental justice. A summary of major regulations and guidance documents that establish the requirements for FAA’s environmental justice program is presented below.

EO 12898, "Federal Actions to Address Environmental Justice in Minority and Low-Income Populations." EO 12898 requires Federal agencies to achieve environmental justice by identifying and addressing disproportionately high and adverse human health and environmental impacts on minority and low-income populations to the maximum extent practical, and as permitted by law. The

Executive order calls for action in four areas that can be directly tied to the NEPA process.

- Each agency is to develop and periodically review its strategy for implementing environmental justice. The DOT environmental justice strategy calls for the review and update, as appropriate, of DOT Order 5610.1C, "Procedures for Considering Environmental Impacts," to ensure that it is consistent with EO 12898 and DOT Order 5610.2, "Environmental Justice in Minority Populations and Low-Income Populations."
- Each agency is to conduct research and collect and analyze data particularly with respect to multiple and cumulative exposures to environmental hazards for low-income populations, minority populations, and Native American tribes. Because environmental impacts tend to be concentrated in areas where low-income and minority communities reside, the impacts often come from multiple sources. Data resulting from these studies should be incorporated into NEPA analyses on the cumulative impacts of proposed FAA actions, as appropriate.
- Collect, maintain, and analyze information on the patterns of subsistence consumption of fish, vegetation, or wildlife. Subsistence consumption in low-income and minority communities may result in exposure pathways and uptake mechanisms that are not commonly found elsewhere. This data can be used to assess the potential impact of an agency's actions when they may impact patterns of subsistence fishing and use of vegetation or wildlife and show a disproportionate and adverse impact to minority or low-income populations.
- Expand the public participation program to provide effective access for all affected populations to information and effective participation in an agency's decision-making processes. The Executive order specifically calls for translation of crucial public documents, notices, and hearings that relate to human health or the environment for populations that speak English on a limited basis. The Executive order also stipulates that all public materials be concise, understandable, and readily accessible to the public.

The Executive order created an Interagency Working Group (IWG) to implement its requirements. FAA is represented on the IWG through the DOT.

President's Council on Environmental Quality: "Environmental Justice – Guidance under the National Environmental Policy Act." This document presents guidance on how Federal agencies, including the FAA, are to consider and assess environmental justice under NEPA. The Council on Environmental Quality (CEQ) develops and issues guidelines and regulations for Federal agencies to follow in complying with NEPA (40 CFR Parts 1500-1508). NEPA's goals embrace the very essence of environmental justice in "encouraging enjoyable and productive harmony between man and the environment." CEQ has oversight of the FAA's compliance with NEPA and EO 12898.

U.S. Department of Transportation (DOT) "Final Environmental Justice Strategy," 60 FR 33896, June 29, 1995. EO 12898 directs each Federal agency to develop a strategy to address environmental justice concerns in its programs, policies, and regulations. The DOT Strategy on Environmental Justice was formulated by DOT in direct response to this requirement. The DOT environmental justice strategy is focused on three elements that are outlined below.

- **Public outreach on implementation of the environmental justice strategy.** This element requires DOT to plan and review with its stakeholders its plans for environmental justice. This is to be accomplished through:
 1. Grass-roots meetings to better understand community-based environmental justice concerns and to provide training on the transportation decision-making process;
 2. A Secretarial-level meeting of experts, traditional DOT stakeholders, and environmental justice representatives to recommend specific policies and actions to implement EO 12898 and the DOT's environmental justice strategy; and
 3. Regional workshops for state and local officials on how to implement the DOT's Environmental Justice strategy.
- **DOT order on environmental justice.** This element requires DOT to issue an Order on environmental justice to ensure application of this strategy in such a way that environmental justice is fully integrated into existing agency operations. This element was satisfied with the issuance of the DOT Order 5610.2 on environmental justice.
- **DOT training on environmental justice.** This element requires DOT to ensure that all DOT managers are fully aware of their environmental justice responsibilities. It also calls for all DOT operating administrations (e.g., FAA) to review and modify their existing training courses to ensure adequate coverage of environmental justice principles and to use training examples that include environmental justice aspects.

U.S. Department of Transportation (DOT) Order 5610.2, "Environmental Justice in Minority Populations and Low-Income Populations." DOT's procedures on how the agency is to achieve environmental justice as a part of its mission are presented in this order. These requirements pertain to all projects, programs, policies, and activities that affect human health or the environment, and are undertaken or approved by the FAA. Activities include, but are not limited to, permits, licenses, and financial assistance provided by DOT and or FAA and other operating administrations. This Order also explicitly requires FAA and other operating administrations to fully consider environmental justice principles throughout its planning and decision-making processes using the principles of NEPA, the Civil Rights Act of 1964 (Title VI), and other applicable regulations. Compliance is to be achieved by having each operating administration identify and address, as appropriate, disproportionately high and adverse human health or

environmental effects, including interrelated social and economic effects, of its programs, policies, and activities on minority and low-income populations in the United States.

U.S. Environmental Protection Agency: "Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses." As the Federal agency with primary expertise in environmental matters, the U.S. Environmental Protection Agency has the authority to review and comment on all NEPA actions. EPA also has the authority to challenge and appeal other agencies' decisions to CEQ. Therefore, having a clear understanding of how EPA is interpreting and implementing environmental justice for NEPA actions is important to the success of FAA's environmental justice analyses for NEPA documentation. This document provides guidance on how EPA's NEPA analysts are to incorporate environmental justice into their preparation of environmental impact statements (EIS's) and environmental assessments (EA's). Specifically, this guidance is to assist EPA staff who are responsible for developing EPA NEPA compliance documentation in addressing a specific concern: how to analyze and assess the distribution of effects of environmental impacts on minority and low-income populations. This guidance also will assist EPA personnel who are responsible for satisfying NEPA compliance obligations as a cooperating agency.

3. **How can minority populations be identified and defined?**

Minority populations can be identified and defined through a three-step screening process which is presented below:

- **Define the affected area.** The first step in the screening process is to delineate the area affected by the proposed action. Environmental justice guidance defines the affected area as the area that the proposed project or action will or may have an effect on. Care should be taken that the geographic area of analysis is chosen so as not to artificially dilute or inflate the affected minority population. Further, an area analyzed for environmental justice may go beyond the typical area of EIS concern in certain instances where the area may be used for spiritual or subsistence purposes by Native American communities for example.
- **Obtain U.S. Bureau of Census (BOC) demographic data to determine the minority composition of the affected area.** DOT Order 5610.2 defines a minority population as any readily identifiable group of minority persons who live in geographic proximity (e.g., the affected area). This definition includes, if circumstances warrant, geographically dispersed/transient persons who will be affected by a proposed program, policy, or activity in geographic proximity. BOC data is a reliable source of demographic data that can be used to determine if minority populations are present within the affected area. BOC data is aggregated into pre-selected levels, such as national, state, county, census tract, and census block.

Minority populations however, often occur in small pockets within a larger community. Therefore, care must be taken to ensure that minority populations are not missed because they live within geographic areas that do not align with BOC data. Additionally, some minority populations are transient and may not be accounted for in census data. These communities include seasonal, migrant farm workers as well as other minority communities. Sources of information regarding small pockets of minorities and transient minority populations can be obtained through local churches, state and local colleges, community centers, and expanded public participation efforts. Additional care should be taken to determine if the percentage of minority population within the affected area is "meaningfully greater" than the minority population's percentage in the general population or other "appropriate unit of geographic analysis." CEQ guidance provides that if the affected area's minority population (1) exceeds 50 percent or (2) if the minority population percentage present in the affected area is meaningfully greater than the minority population in the general population or other appropriate unit of geographic analysis, an environmental justice concern exists. CEQ guidance also states that an environmental justice concern may exist if there is more than one minority group present and the minority percentage, as calculated by summing all minority persons, meets one of the thresholds presented above. If environmental justice concerns exist, the potential impacts to this population from the proposed action must be assessed.

4. How can low-income populations be identified and defined?

Low-income populations can be identified and defined through a two-step screening process which is presented below:

- **Define the affected area.** The first step in the screening process is to delineate the area affected by the proposed action. The affected area is defined as the area on which the proposed project or action will or may have an effect.
- **Obtain U.S. Bureau of Census (BOC) demographic data or other relevant data to determine the number of individuals within the affected area whose median household income is at or below the U.S. Department of Health and Human Service's (HHS) poverty guidelines.** DOT Order 5610.2, defines a low-income population as any readily identifiable group of individuals, whose median household income is at or below the U.S. Department of Health and Human Services (HHS) poverty guidelines, who live in the affected area. This may include, if circumstances warrant, geographically dispersed/transient persons who will be affected by a proposed program, policy, or activity. CEQ guidance provides that low-income populations in an affected area be identified by using the annual statistical poverty thresholds from the BOC's Current Population Reports, Series 60 on Income and Poverty. These income data are available in several formats to assist FAA personnel in determining whether an affected area contains a low-income population. Because BOC data is only gathered every 10 years and may not provide the level of detail required for analysis, local sources of information (e.g., university, local or state departments of economic

development) can also be used to augment BOC data and ensure accurate analyses are performed. FAA has used other techniques such as neighborhood interviews and meetings to identify environmental justice populations and issues for analyses.

5. How can environmental justice values and requirements be integrated into the NEPA process?

Environmental justice is not so much a set of rules, but rather an awareness of values and requirements which can be easily woven into every level of the FAA NEPA process. Summary information on how environmental justice values can be woven into NEPA analyses is presented below.

Environmental Justice Screening. Identifying and defining environmental justice communities is the first step in determining if environmental justice values must be incorporated into an FAA NEPA analysis. This process can be accomplished by asking two questions:

- Does the potentially affected community include minority and/or low-income populations?
- Are the environmental impacts likely to fall disproportionately on minority and/or low-income members of the community or Native American tribal resources?

If the answer to both of these questions is no, then this screening analysis should be documented in either (1) project files for a Categorical Exclusion (CATEX), (2) the Finding of No Significant Impact (FONSI) for an environmental assessment (EA), or (3) the Record of Decision (ROD) for an environmental impact statement (EIS). If the answers to these questions are yes, then environmental justice values should be incorporated into the NEPA analysis and documentation.

Scoping and Planning. Through an expanded public involvement effort, information important to environmental justice analyses can be brought to the attention of FAA that would have otherwise not been detected. The scoping notice should present the results of the screening analysis. If the answers to the screening questions are no, then the scoping notice should so state and ask the community for additional information to aid FAA in identifying and assessing potential impacts to low-income and minority populations. Expanded public outreach activities that may be employed include consulting with community leaders, consulting with tribal officials and state or local officials, and soliciting information from the local community on environmental justice issues.

Alternatives. Environmental justice analyses should be conducted for all reasonable alternatives. DOT Order 5610.2 requires that proposed actions or alternatives that will have a disproportionately high and adverse effect on an environmental justice community can only be carried out if (1) there is a substantial need for the proposed

action and (2) alternatives resulting in fewer impacts to the environmental justice community would have other adverse social, economic, environmental, or human health impacts that are severe, or (3) alternative actions would involve increased costs of extraordinary magnitude. Documentation of these analyses must be contained in the NEPA documentation for each proposed action.

Affected Resources. To ensure environmental justice is fully integrated into the NEPA analysis, it is important to identify resources within the environmental justice community that may be impacted by the proposed action. Many indigenous populations rely on native fish, vegetation, and/or wildlife for a principal portion of their diet. It is only through expanded public involvement efforts that these differing rates of consumption may come to light.

Mitigation. For each alternative that will result in environmental justice concerns, mitigation measures should be carefully examined. Mitigation measures should focus on true mitigation of the impact rather than merely shifting the impact from one population to another.

Record of Decision/Finding of No Significant Impact. Documentation of how environmental justice concerns have been identified, considered, and analyzed should be fully documented in the Finding of No Significant Impact/ Record of Decision or the documentation for the categorical exclusion. This explanation should include all alternatives and mitigation options that were analyzed. If mitigation measures are required to reduce disproportionately high and adverse effects, then FAA commitment to these measures should be documented in the Finding of No Significant Impact/ Record of Decision. Public participation is integral to the systematic incorporation of environmental justice concerns into NEPA analyses. Therefore, public participation efforts that are focused at identifying environmental justice concerns and involving environmental justice communities in the FAA decision-making process also should be documented.

6. In light of environmental justice, what is an adverse effect or impact?

Adverse effect is a term used to describe the entire compendium of significant (as defined by NEPA) individual or cumulative human health or environmental effects which may result from an FAA action. Examples of adverse effects for environmental justice communities include but are not limited to:

- Bodily impairment, infirmity, illness, or death;
- Air, noise, soil, and water pollution or contamination;
- Destruction or disruption of man-made or natural resources;
- Destruction or diminution of aesthetic values;
- Destruction or disruption of community cohesion or a community's economic vitality;

- Destruction or disruption of the availability of public and private facilities and services;
- Vibration;
- Adverse employment effects;
- Displacement of persons, businesses, farms, or nonprofit organizations;
- Increased traffic congestion, isolation, exclusion, or separation of minority or low-income individuals within a community or from the broader community; and
- Denial of, reduction in, or significant delay in the receipt of, benefits of DOT programs, policies, or activities.

7. What is a disproportionately high and adverse effect on minority and low-income populations?

CEQ and DOT guidance frame the context and content for FAA determinations of disproportionately high and adverse effects on minority, low-income, and Native American populations. DOT guidance defines a disproportionately high and adverse effect on minority and low-income populations as an adverse effect that:

- Is predominately borne by a minority and/or low-income population, or
- Is suffered by the minority and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be experienced by the non-minority populations and/or non-low-income population.

CEQ guidance states that the three factors presented below should be considered to the extent practicable when determining whether human health effects are disproportionately high and adverse.

- Are the health effects, which may be measured in risks and rates, significant (as employed by NEPA), or above generally accepted norms?
- Is the risk or rate of hazard exposure for an environmental justice community or a Native American tribe significant, and does it appreciably exceed or is it likely to appreciably exceed the risk or rate of exposure to the general population or comparison community?
- Are health effects that occur within the environmental justice community or Native American tribe(s) affected by cumulative or multiple adverse exposures from environmental hazards posed by the proposed action?

Disproportionately high and adverse environmental effects can be determined for environmental justice communities using the following three factors:

- Is there or will there be specific impacts to the natural or physical environment that significantly (as employed by NEPA) and adversely impacts an environmental justice community or Native American tribes?

- Are there general environmental effects that are significant, as employed by NEPA, and have or may have an adverse impact on an environmental justice community or Native American tribes?
- Will the environmental effects occur or could they occur within an environmental justice community or a Native American tribal community affected by cumulative or multiple adverse exposures from environmental hazards?

8. What factors should be included in environmental justice analyses for NEPA documents?

Compliance with EO 12898 and DOT Order 5610.2 requires FAA to determine if a proposed action will result in disproportionately high and adverse effects to an environmental justice community. Some of the factors that may be included in NEPA environmental justice evaluations are presented below. This listing is not intended to be an exhaustive listing, but one that can promote integration of environmental justice values into NEPA analyses.

Demographic factors. Demographic information is the basis for determining whether or not an environmental justice community exists within the affected area for NEPA analyses. Race, ethnicity, and income data are integral to this analysis. Other factors that may be included in this analysis are population age, population density, education, literacy, and rapid or severe changes in population or economic growth.

Socioeconomic. Assessing the interrelated socioeconomic impact from a proposed action on the affected population is a building block of most environmental justice analyses for NEPA documentation. Potential sources of information for these analyses include tribal, state and local planning agencies, state housing authorities, and welfare agencies. If individuals within the community are economically disadvantaged, this may preclude their efforts to avoid risk by moving from the area. Economic conditions that can be analyzed to determine if disproportionately high and adverse effects to an environmental justice community exist include the economic condition of the individuals within the affected area and the overall economic health of the community.

Human health risk and ecological risk assessments. Risk assessments may not account for exposure and uptake mechanisms that are present in environmental justice communities. Data acquired through public involvement and consultation with local agencies, Native American tribal communities, and local communities can provide risk assessors with data that are critical to correctly assessing risks to human health and environment. Analysts should tailor tools to consider the distribution of impacts to low-income and/or minority populations whose patterns for subsistence can be different from the rest of the population. Consumption rates for fish, vegetation, water, and wildlife vary among ethnic groups and cultures. For instance, many indigenous people will use plants that are not generally used by the population at large, as a source of materials for food, pottery dyes, and weaving dyes. Land and

water resources that are not commonly used, may be important to cultural practices, a community's economy, or a place of recreation for low-income and minority populations. Additionally, because environmental impacts tend to be concentrated in low-income or minority communities, risk assessors also should take into account exposure to multiple sources of pollutants and/or multiple pathways for the same pollutants.

9. What tools and methods are available to assist FAA in identifying and assessing potentially disproportionately high and adverse effects on minority and low-income populations?

Geographic Information Systems. Geographic Information Systems (GIS) provide an excellent mechanism for mapping demographic data, overlaying the environmental impacts, and measuring a community's exposure to impacts from multiple sources. GIS is a tool that also can assist in comparing the impacts between communities to evaluate and assess equity concerns. GIS databases that are commonly used for environmental justice analyses include ARC/INFO and Landview II.

U.S. Bureau of Census. BOC is a rich source of data to assist FAA in identifying low-income and minority populations. In 1978, the BOC established the State Data Center Program to provide training and technical assistance in accessing and using BOC data. Information regarding this BOC data and other state-associated data sources can be accessed through the BOC Web page at <http://www.census.gov/sdc/www>.

National Human Exposure Assessment Survey (NHEXAS) – The EPA's Office of Research and Development is compiling a database to address human health and exposure information required for environmental justice analyses. The human exposure database will address some of the geographic and demographic issues relevant to environmental justice. When complete, this database will provide NEPA analysts with data regarding the magnitude, extent, and causes of human exposure which can greatly assist them in completing their environmental justice analyses.

Environmental justice database – EPA's Office of Policy, Planning, and Evaluation is currently developing an environmental justice database. This database will integrate demographic data from the 1990 Census, environmental data from air monitoring stations, and the Toxic Release Inventory database with the health effects data from the National Health and Nutrition Examination Survey III (NHANES-III). This database will provide data regarding the potential correlation between diseases and air exposure data for high-impact populations.

10. Does implementation of EO 12898 change the prevailing legal thresholds and statutory interpretations under NEPA and existing case law for determinations of significance?

CEQ guidance specifically states that "The Executive Order 12898 does not change the prevailing legal thresholds and statutory interpretations under NEPA and case law." However, it is only through full incorporation of environmental justice principles into the NEPA process that disproportionately high and adverse effects that are significant will be identified and considered by Federal decision-makers. Information obtained through incorporation of environmental justice into the scoping process, public participation, identifying the affected environment, and analyses of potential consequences may bring to light potential impacts to human health and the environment that would otherwise go undetected.

EO 12898 does not prevent a Federal agency from going forward with a proposed action, even if it results in a disproportionately high and adverse impact. However, DOT Order 5610.2, states that officials can implement policies, programs, or activities that will result in a disproportionately high and adverse impact "only if further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effect are not practicable." Furthermore, "in determining whether a mitigation measure or alternative is "practicable," the social, economic (including costs), and environmental effects of avoiding or mitigating the adverse effects will be taken into account." The Order states that any respective program, policy, or activity that will have a disproportionately high and adverse effect on populations protected by Title VI of the Civil Rights Act of 1964 will be carried out only if:

- (1) "a substantial need for the program, policy, or activity exists, based on the overall public interests, and
- (2) alternatives that would have less adverse effects on protected populations (and still satisfy the need identified in subparagraph (1) above, either (i) would have other adverse social, economic, environmental, or human health impacts that are more severe, or (ii) would involve increased costs of extraordinary means."

The findings, determinations, and/or demonstration for environmental justice actions and analyses must be documented in the NEPA documentation which is being prepared for the program, policy, or activity analyzed, or in other appropriate planning or program documentation.

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